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**LEAD ATTORNEY IN CHARGE FOR
PLAINTIFF AND CLASS MEMBERS**

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Merry Mears, on Behalf of herself and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

Great Alaskan Bush Company and Damian
Hartze, Individually,

Defendants.

No.

**COLLECTIVE AND CLASS ACTION
COMPLAINT**

(JURY TRIAL REQUESTED)

Plaintiff Merry Mears, on behalf of herself and on behalf of all others similarly
situated, alleges as follows:

I. SUMMARY

1. Great Alaskan Bush Company and Damian Hartze (hereinafter collectively
referred to as “Defendants”) required and/or permitted Merry Mears (hereinafter
“Plaintiff”) to work as an exotic dancer at their adult entertainment club in excess of forty

1 (40) hours per week, but refused to compensate her at the applicable minimum wage and
2 overtime rates. In fact, Defendants refused to compensate Plaintiff whatsoever for any
3 hours worked. Plaintiff's only compensation was in the form of tips from club patrons.
4 Moreover, Plaintiff was required to divide her tips with Defendants and other employees
5 who do not customarily receive tips. Therefore, Defendants have failed to compensate
6 Plaintiff at the federally-mandated minimum wage rate.
7

8
9 2. Defendants' conduct violates the Fair Labor Standards Act (FLSA), which
10 requires non-exempt employees to be compensated for their overtime work at a rate of
11 one and one-half times their regular rate of pay. *See* 29 U.S.C. § 207(a).
12

13 3. Furthermore, Defendants' practice of failing to pay tipped employees
14 pursuant to 29 U.S.C. § 203(m), violates the FLSA's minimum wage provision. *See* 29
15 U.S.C. § 206.
16

17 4. Plaintiff brings a collective action to recover the unpaid overtime
18 compensation and minimum wage owed to them individually and on behalf of all other
19 similarly situated employees, current and former, of Defendants in Arizona. Members of
20 the Collective Action are hereinafter referred to as "Class Members."
21

22 5. Additionally, Defendants' failure to compensate Plaintiff and all other non-
23 exempt employees at a rate equal to or in excess of Arizona's required minimum wage
24 violates the Arizona Wage Act, ARIZ. REV. STAT. ANN. § 23-350, et seq., and the Arizona
25 Minimum Wage Act, ARIZ. REV. STAT. ANN. § 23-363, et seq. Plaintiff, therefore, brings
26 a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure to recover
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1 unpaid wages and other damages owed under Arizona wage laws. Members of the Rule
2 23 Class Action are hereinafter referred to as the “Arizona Class Members.”
3

4 **II. SUBJECT MATTER JURISDICTION AND VENUE**

5 6. This Court has jurisdiction over the subject matter of this action under 29
6 U.S.C. § 216(b) and 28 U.S.C. § 1331.
7

8 7. This Court also has supplemental jurisdiction over the state law claims
9 raised herein pursuant to 28 U.S.C. § 1367 because such claims do not raise novel or
10 complex issues of state law, and because those claims derive from a common nucleus of
11 operative facts from which the FLSA claims stated herein derive.
12

13 8. Venue is proper in the District of Arizona because a substantial portion of
14 the events forming the basis of this suit occurred in this District, and Defendants operate
15 an adult entertainment club that is located in this District.
16

17 **III. PARTIES AND PERSONAL JURISDICTION**

18 9. Plaintiff Merry Mears is an individual residing in Maricopa County,
19 Arizona. Her consent to this action is attached hereto as Exhibit “A.”
20

21 10. The FLSA Class Members and Arizona Class Members are all current and
22 former exotic dancers who worked in Arizona at Defendants’ adult entertainment club at
23 any time starting three (3) years before this Complaint was filed, up to the present.
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1 998 F.2d 324, 329 (5th Cir. 1993); *Donovan v. Grim Hotel Co.*, 747 F.2d 966, 971-72
2 (5th Cir. 1984).

3
4 17. Defendant Damian Hartze is the owner and registered agent of
5 Defendant Great Alaskan Bush Company.

6 18. Defendant Damian Hartze is involved in the day-to-day business
7 operations of Defendant Great Alaskan Bush Company.
8

9 19. As the owner of Great Alaskan Bush Company, Defendant Damian
10 Hartze employed the Plaintiff, FLSA Class Members, and Arizona Class Members as
11 employees who danced for and entertained customers.
12

13 20. Defendant Hartze has the authority to hire and fire employees, the
14 authority to direct and supervise the work of employees, the authority to sign on the
15 business's checking accounts, including payroll accounts, and the authority to make
16 decisions regarding employee compensation and capital expenditures.
17

18 21. Defendant Damian Hartze controlled the nature, pay structure, and
19 employment relationship of Plaintiff, FLSA Class Members, and Arizona Class
20 Members.
21

22 22. As such, pursuant to 29 U.S.C. § 203(d), ARIZ. REV. STAT. ANN. § 23-
23 350(3), and ARIZ. REV. STAT. ANN. § 23-362(B), Defendant Damian Hartze acted
24 directly or indirectly in the interest of Plaintiff's, FLSA Class Members' and Arizona
25 Class Members' employment as their employer, which makes him individually liable
26 under the FLSA and Arizona State Law.
27
28

1 32. Plaintiff worked on a regular basis for Defendants' gentlemen
2 establishment located in Phoenix, Arizona.

3 33. Plaintiff was compensated exclusively through tips from Defendants'
4 customers. That is, Defendants did not pay Plaintiff whatsoever for any hours worked at
5 their establishments.
6

7 34. Furthermore, Defendants charged the Plaintiff a "house fee" per shift
8 worked. Defendants also required Plaintiff to share her tips with other non-service
9 employees who do not customarily receive tips, including the "house mom," disc
10 jockeys, and the bouncers.
11

12 35. All dancers who worked for Defendants were classified as independent
13 contractors.
14

15 36. Defendants are in violation of the FLSA's tipped-employee
16 compensation provision, 29 U.S.C. § 203(m), which requires employers to pay a tipped
17 employee a minimum of \$2.13 per hour. Defendants also violated 29 U.S.C. § 203(m)
18 when they failed to notify the Plaintiff about the tip credit allowance (including the
19 amount to be credited) before the credit was utilized. That is, Defendants' exotic dancers
20 were never made aware of how the tip credit allowance worked or what the amounts to be
21 credited were. Furthermore, Defendants violated 29 U.S.C. § 203(m) because they did
22 not allow Plaintiff to retain all of her tips and instead required that they divide their tips
23 amongst other employees who do not customarily and regularly receive tips. Because
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1 Defendants violated the tip-pool law, Defendants lose the right to take a credit toward
2 minimum wage.

3
4 37. Furthermore, Defendants are in violation of Arizona's tipped-employee
5 compensation provision, ARIZ. REV. STAT. ANN. § 23-363(C), which provides that "the
6 employer may pay a wage up to \$3.00 per hour less than the minimum wage if the
7 employer can establish . . . that for each week, when adding tips received to wages paid,
8 the employee received not less than the minimum wage for all hours worked."
9 Defendants failed to compensate Plaintiff with wages for any hours worked in violation
10 of the Arizona Minimum Wage Act.
11

12
13 38. Defendants illegally classified the dancers as independent contractors.
14 However, at all times, Plaintiff, FLSA Class Members, and Arizona Class Members were
15 employees of Defendants.
16

17 39. Defendants hired/fired, issued pay, supervised, directed, disciplined,
18 scheduled and performed all other duties generally associated with that of an employer
19 with regard to the dancers.
20

21 40. In addition, Defendants instructed the dancers about when, where, and how
22 they were to perform their work.

23 41. The following further demonstrates the dancers' status as employees:

- 24 a. Defendants have the sole right to hire and fire the dancers;
25
26 b. Defendants required dancers to complete an employee application as
27 a prerequisite to their employment;
28

- c. Defendants made the decision not to pay overtime;
- d. Defendants provide the dancers with music equipment and a performing stage;
- e. Defendants supervise the dancers;
- f. Defendants require that dancers purchase their uniforms;
- g. The dancers have made no financial investment with Defendants' business;
- h. Defendants schedule dancers and as such have sole control over their opportunity for profit;
- i. Defendants apply a fine to the dancers if they fail to follow Defendants' schedule; and
- j. The dancers were hired as permanent employees and have worked for Defendants for years.

42. Defendants misclassified Plaintiff, FLSA Class Members, and Arizona Class Members as independent contractors to avoid Defendants' obligation to pay them pursuant to the FLSA.

43. Plaintiff is not exempt from the overtime and minimum wage requirements under the FLSA.

44. Although Plaintiff and FLSA Class Members are required to and do in fact frequently work more than forty (40) hours per workweek, they are not compensated at the FLSA mandated time-and-a-half rate for hours in excess of forty (40) per

1 workweek. In fact, they receive no compensation whatsoever from Defendants and thus,
2 Defendants violate the minimum wage requirement of the FLSA. *See* 29 U.S.C. § 206.

3
4 45. Defendants' method of paying Plaintiff in violation of the FLSA was
5 willful and was not based on a good faith and reasonable belief that its conduct complied
6 with the FLSA. Defendants misclassified Plaintiff with the sole intent to avoid paying
7 her in accordance to the FLSA. There are multiple federal court opinions finding that this
8 method of compensation is in violation of the FLSA, and therefore, Defendants' conduct
9 is willful.
10

11 46. Defendants' method of paying Plaintiff and the Arizona Class Members
12 was in violation of the Arizona Minimum Wage Act and Arizona Wage Law and was
13 willful and not based on a good faith and reasonable belief that its conduct complied with
14 Arizona Law.
15

16 47. Further, Defendants failed to keep adequate records of Plaintiff and FLSA
17 Class Members' work hours and pay in violation of section 211(c) of the Fair Labor
18 Standards Act. *See* 29 U.S.C. § 211(c).
19

20 48. Federal law mandates that an employer is required to keep for three (3)
21 years all payroll records and other records containing, among other things, the following
22 information:
23

- 24 a. The time of day and day of week on which the employees' work week
25 begins;
26 b. The regular hourly rate of pay for any workweek in which overtime
27 compensation is due under section 7(a) of the FLSA;
28

- c. An explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, or other basis;
- d. The amount and nature of each payment which, pursuant to section 7(e) of the FLSA, is excluded from the “regular rate;”
- e. The hours worked each workday and total hours worked each workweek;
- f. The total daily or weekly straight time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;
- g. The total premium for overtime hours. This amount excludes the straight-time earnings for overtime hours recorded under this section;
- h. The total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments;
- i. The dates, amounts, and nature of the items which make up the total additions and deductions;
- j. The total wages paid each pay period; and
- k. The date of payment and the pay period covered by payment.

29 C.F.R. 516.2, 516.5.

49. Defendants have not complied with federal law and have failed to maintain such records with respect to the Plaintiff and FLSA Class Members. Because Defendants’ records are inaccurate and/or inadequate, Plaintiff and FLSA Class Members can meet their burden under the FLSA by proving that they, in fact, performed work for which they were improperly compensated, and produce sufficient evidence to show the amount and extent of the work “as a matter of a just and reasonable inference.” *See, e.g., Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946).

VI. EQUITABLE TOLLING

50. The doctrine of equitable tolling preserves a plaintiff's full claim when a strict application of the statute of limitations would be inequitable. *See Partlow v. Jewish Orphans' Home of S. Cal., Inc.*, 645 F.2d 757, 760–61 (9th Cir. 1981), *abrogated on other grounds by Hoffman-LaRoche Inc. v. Sperling*, 493 U.S. 165 (1989).

51. Equitable tolling is proper when an employer has engaged in misleading conduct. Defendants intentionally misled the Plaintiff into believing that Defendants were not required to pay her minimum wage and/or overtime for hours worked in excess of forty (40) hours per workweek. Defendants coerced the Plaintiff, FLSA Class Members, and Arizona Class Members into believing that they were independent contractors. Additionally, Defendants failed to place the necessary and required Department of Labor posters which inform workers of their rights. Consequently, the Plaintiff, FLSA Class Members, and Arizona Class Members were victims of fraud and unable to ascertain any violation taking place.

52. Thus, the statute of limitations for the Plaintiff, FLSA Class Members, and Arizona Class Members should be equitably tolled due to Defendants' fraudulent concealment of the Plaintiff's, FLSA Class Members' and Arizona Class Members' rights. Plaintiff therefore seeks to have the limitations period extended from the first date that Defendants used this covert payroll practice up to the time each Plaintiff joins this lawsuit.

VII. CAUSES OF ACTION

COUNT I

**VIOLATION OF THE FAIR LABOR STANDARDS ACT
FAILURE TO PAY OVERTIME
(COLLECTIVE ACTION)**

53. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

54. Defendants' practice of failing to pay Plaintiff and FLSA Class Members time-and-a-half rate for hours in excess of forty (40) per workweek violates the FLSA. 29 U.S.C. § 207. In fact, Defendants do not compensate them whatsoever for any hours worked.

55. None of the exemptions provided by the FLSA regulating the duty of employers to pay overtime at a rate not less than one and one-half times the regular rate at which its employees are employed are applicable to the Defendants or the Plaintiff.

COUNT II

**VIOLATION OF THE FAIR LABOR STANDARDS ACT
FAILURE TO PAY THE MINIMUM WAGE
(COLLECTIVE ACTION)**

56. Plaintiff incorporates all allegations contained in the foregoing paragraphs.

57. Defendants' practice of failing to pay Plaintiff and FLSA Class Members at the required minimum wage rate violates the FLSA. 29 U.S.C. § 206. In fact, Defendants do not compensate them whatsoever for any hours worked and have violated the tip credit provision under the FLSA as described above.

1 58. None of the exemptions provided by the FLSA regulating the duty of
2 employers to pay employees for all hours worked at the required minimum wage rate are
3 applicable to the Defendants or the Plaintiff.
4

5
6 **COUNT IV**
7 **VIOLATION OF ARIZONA MINIMUM WAGE ACT**
8 **FAILURE TO PAY MINIMUM WAGE**
9 **(CLASS ACTION)**

10 59. Plaintiff and Arizona Class Members incorporate all allegations contained
11 in the foregoing paragraphs.

12 60. Defendants' practice of willfully failing to pay Plaintiff and Arizona Class
13 Members wages at the rate of the Arizona Minimum Wage violates the Arizona
14 Minimum Wage Act. ARIZ. REV. STAT. ANN. § 23-363(A), (C). In fact, Defendants do
15 not compensate them whatsoever for any hours worked and have violated the tipped-
16 employee compensation provision under Arizona law as described above.
17

18 **COUNT V**
19 **VIOLATION OF ARIZONA WAGE LAW**
20 **FAILURE TO PAY WAGES DUE**
21 **(CLASS ACTION)**

22 61. Plaintiff and Arizona Class Members incorporate all allegations contained
23 in the foregoing paragraphs.

24 62. Defendants' practice of willfully failing to pay Plaintiff and Arizona Class
25 Members wages for labor performed violates Arizona Wage Law. ARIZ. REV. STAT. ANN.
26
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1 § 23-351(C). In fact, Defendants do not compensate them whatsoever for any hours
2 worked.

4 **VIII. COLLECTIVE ACTION ALLEGATIONS**

5 **A. FLSA Class Members**

6
7 63. Plaintiff brings this action as an FLSA collective action pursuant to 29
8 U.S.C. § 216(b) on behalf of all persons who were or are employed by Defendants as
9 exotic dancers at any time during the three (3) years prior to the commencement of this
10 action to present.

11
12 64. Plaintiff has actual knowledge that FLSA Class Members have also been
13 denied overtime pay for hours worked over forty hours per workweek and have been
14 denied pay at the federally mandated minimum wage rate. That is, Plaintiff worked with
15 other dancers in Phoenix, Arizona. As such, she has first-hand personal knowledge of the
16 same pay violations throughout Defendants' multiple establishments. Furthermore, other
17 exotic dancers at Defendants' various establishments have shared with her similar pay
18 violation experiences as those described in this complaint.

19
20 65. Other employees similarly situated to the Plaintiff work or have worked for
21 Defendants' gentlemen's club business, but were not paid overtime at the rate of one and
22 one-half their regular rate when those hours exceeded forty hours per workweek.
23 Furthermore, these same employees were denied pay at the federally mandated minimum
24 wage rate.

1 66. Although Defendants permitted and/or required the FLSA Class Members
2 to work in excess of forty hours per workweek, Defendants have denied them full
3 compensation for their hours worked over forty. Defendants have also denied them full
4 compensation at the federally mandated minimum wage rate.
5

6 67. FLSA Class Members perform or have performed the same or similar work
7 as the Plaintiff.
8

9 68. FLSA Class Members regularly work or have worked in excess of forty
10 hours during a workweek.
11

12 69. FLSA Class Members are not exempt from receiving overtime and/or pay
13 at the federally mandated minimum wage rate under the FLSA.
14

15 70. As such, FLSA Class Members are similar to Plaintiff in terms of job
16 duties, pay structure, misclassification as independent contractors and/or the denial of
17 overtime and minimum wage.

18 71. Defendants' failure to pay overtime compensation and hours worked at the
19 minimum wage rate required by the FLSA results from generally applicable policies or
20 practices, and does not depend on the personal circumstances of the FLSA Class
21 Members.
22

23 72. The experiences of the Plaintiff, with respect to her pay, are typical of the
24 experiences of the FLSA Class Members.
25

26 73. The specific job titles or precise job responsibilities of each FLSA Class
27 Member does not prevent collective treatment.
28

1 74. All FLSA Class Members, irrespective of their particular job requirements,
2 are entitled to overtime compensation for hours worked in excess of forty (40) during a
3 workweek.
4

5 75. All FLSA Class Members, irrespective of their particular job requirements,
6 are entitled to compensation, for hours worked, at the federally mandated minimum wage
7 rate.
8

9 76. Although the exact amount of damages may vary among FLSA Class
10 Members, the damages for the FLSA Class Members can be easily calculated by a simple
11 formula. The claims of all FLSA Class Members arise from a common nucleus of facts.
12 Liability is based on a systematic course of wrongful conduct by the Defendant that
13 caused harm to all FLSA Class Members.
14

15 77. As such, Plaintiff brings her FLSA overtime and minimum wage claims as
16 a collective action on behalf of the following class:
17

18 **The FLSA Class Members are all of Defendants' current and former**
19 **exotic dancers who worked at the Great Alaskan Bush Company**
20 **located in Phoenix, Arizona at any time starting three years before**
this Complaint was filed up to the present.

21 **B. Arizona Class Action**

22 63. Plaintiff and the Arizona Class Members incorporate all preceding
23 paragraphs as though fully set forth herein.
24

25 64. Plaintiff brings her Arizona wage claims as a Rule 23 class action on behalf
26 of the following class:
27
28

1 **The Arizona Class Members are all of Defendants' current and**
2 **former exotic dancers who worked at the Great Alaskan Bush**
3 **Company located in Phoenix, Arizona at any time starting three**
4 **years prior to the filing of this Complaint through the present.**

5 65. Numerosity. The number of members in the Arizona Class is believed to
6 be over one hundred (100). This volume makes bringing the claims of each individual
7 member of the class before this Court impracticable. Likewise, joining each individual
8 member of the Arizona Class as a plaintiff in this action is impracticable. Furthermore,
9 the identity of the members of the Arizona Class will be determined from Defendants'
10 records, as will the compensation paid to each of them. As such, a class action is a
11 reasonable and practical means of resolving these claims. To require individual actions
12 would prejudice the Arizona Class and the Defendants.

13 66. Typicality. Plaintiff's claims are typical of the Arizona Class because like
14 the members of the Arizona Class, Plaintiff was subject to Defendants' uniform policies
15 and practices and was compensated in the same manner as others in the Arizona Class.
16 Defendants failed to pay non-exempt employees who worked at Great Alaskan Bush
17 Company overtime wages for all of their overtime hours worked. All members of the
18 Arizona Class worked substantially more than eight (8) hours in a day and forty (40)
19 hours in a workweek. Plaintiff and the Arizona Class were likewise not paid minimum
20 wage for all of their hours worked. Plaintiff and the Arizona Class have been
21 uncompensated and/or under-compensated as a result of Defendants' common policies
22 and practices which failed to comply with Arizona law.
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1 67. Adequacy. Plaintiff is a representative party who will fairly and adequately
2 protect the interests of the Arizona Class because it is in her interest to effectively
3 prosecute the claims herein alleged in order to obtain the unpaid wages and penalties
4 required under Arizona law. Plaintiff has retained attorneys who are competent in both
5 class actions, and wage and hour litigation. Plaintiff does not have any interest which
6 may be contrary to or in conflict with the claims of the Arizona Class she seeks to
7 represent.
8

9
10 68. Commonality. Common issues of fact and law predominate over any
11 individual questions in this matter. The common issues of fact include, but are not
12 limited to:
13

14 a. Whether Plaintiff and the Arizona Class worked more than eight (8)
15 hours in a day and/or worked more than forty (40) hours in a workweek;

16 b. Whether Defendants failed to pay Plaintiff and the Arizona Class
17 overtime wages for all hours worked over eight (8) hours in a day or over forty
18 (40) hours in a workweek; and

19 c. Whether Defendants failed to pay Plaintiff and Arizona Class the
20 minimum wage for all hours worked.

21 69. The common issues of law include, but are not limited to:

22 a. Whether Defendants improperly classified Plaintiff and the Arizona
23 Class as exempt;

24 b. Whether Plaintiff and the Arizona Class are entitled to compensatory
25 damages;

26 c. The proper measure of damages sustained by Plaintiff and the
27 Arizona Class; and

28 d. Whether Defendants' actions were "willful."

1 70. Superiority. A class action is superior to other available means for the fair
2 and efficient adjudication of this lawsuit. Even in the event any member of the Arizona
3 Class could afford to pursue individual litigation against companies the size of
4 Defendants, doing so would unduly burden the court system. Individual litigation would
5 magnify the delay and expense to all parties and flood the court system with duplicative
6 lawsuits. Prosecution of separate actions by individual members of the Arizona Class
7 would create the risk of inconsistent or varying judicial results and establish incompatible
8 standards of conduct for Defendants.
9

10
11 71. A class action, by contrast, presents far fewer management difficulties and
12 affords the benefits of uniform adjudication of the claims, financial economy for the
13 parties, and comprehensive supervision by a single court. By concentrating this litigation
14 in one forum, judicial economy and parity among the claims of individual Arizona Class
15 Members are promoted. Additionally, class treatment in this matter will provide for
16 judicial consistency. The identity of members of the Arizona Class is readily identifiable
17 from Defendants' records.
18

19
20 72. This type of case is well-suited for class action treatment because: (1)
21 Defendants' practices, policies, and/or procedures were uniform; (2) the burden is on
22 each Defendant to prove it properly compensated its employees; and (3) the burden is on
23 each Defendant to accurately record hours worked by employees and meal periods taken.
24

25
26 73. Ultimately, a class action is a superior forum to resolve the Arizona claims
27 detailed herein because of the common nucleus of operative facts centered on the
28

1 continued failure of Defendants to pay Plaintiff and the Arizona Class according to
2 applicable Arizona laws.

3
4 74. Nature of notice to be proposed. As to the Rule 23 Class, it is contemplated
5 that notice would be issued giving putative class members an opportunity to opt out of
6 the class if they so desire, *i.e.* “opt-out notice.” Notice of the pendency and resolution of
7 the action can be provided to the Arizona class by mail, electronic mail, print, broadcast,
8 internet, and/or multimedia publication.
9

10 **IX. DAMAGES SOUGHT**

11
12 75. Plaintiff, FLSA Class Members, and Arizona Class Members are entitled to
13 recover compensation for the hours they worked for which they were not paid at the
14 federally mandated minimum wage rate.
15

16 76. Additionally, Plaintiff, FLSA Class Members, and Arizona Class Members
17 are entitled to recover their unpaid overtime compensation.

18 77. Plaintiff, FLSA Class Members, and Arizona Class Members are also
19 entitled to all of the misappropriated funds.
20

21 78. Plaintiff and FLSA Class Members are also entitled to an amount equal to
22 all of their unpaid wages as liquidated damages. 29 U.S.C. § 216(b).
23

24 79. Plaintiff and FLSA Class Members are entitled to recover their attorney’s
25 fees and costs as required by the FLSA. 29 U.S.C. § 216(b).
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1 80. Plaintiff and Arizona Class Members are entitled to an amount equal to
2 wages owed, interest thereon, and an additional amount equal to twice the underpaid
3 wages. ARIZ. REV. STAT. ANN. § 23-364(G).
4

5 81. Plaintiff and Arizona Class Members are entitled to treble the amount of
6 wages unpaid under Arizona Wage Law. ARIZ. REV. STAT. ANN. § 23-355(A).
7

8 82. As the District of Arizona has previously concluded, the treble damages
9 provision set forth in ARIZ. REV. STAT. ANN. § 23-355(A) may be applied to treble a
10 liquidated damages award received under the FLSA pursuant to this Court's
11 supplemental jurisdiction. *Davis v. Jobs for Progress*, 427 F. Supp. 479, 483 (D. Ariz.
12 1976).
13

14 83. Plaintiff and Arizona Class Members are entitled to recover attorney's fees
15 and costs under ARIZ. REV. STAT. ANN. §§ 12-341, 12-341.01, 23-364(G).
16

17 **X. JURY DEMAND**

18 84. Pursuant to their rights under the Constitution of the United States, U.S.
19 Const. amend VII, and Fed. R. Civ. P. 38(a), Plaintiff hereby demands a trial by jury.
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PRAYER FOR RELIEF

85. For these reasons, Plaintiff, FLSA Class Members, and Arizona Class Members respectfully request that judgment be entered in their favor awarding the following relief:

- a. Overtime compensation for all hours worked over forty in a workweek at the applicable time-and-a-half rate;
- b. All unpaid wages at the FLSA mandated minimum wage rate;
- c. All misappropriated funds;
- d. An equal amount of all owed wages as liquidated damages as allowed under the FLSA;
- e. An amount equal to wages owed, interest thereon, and an additional amount equal to twice the underpaid wages pursuant to ARIZ. REV. STAT. ANN. § 23-364(G);
- f. An amount equal to treble the amount of wages unpaid under Arizona Wage Law and liquidated damages pursuant to ARIZ. REV. STAT. ANN. § 23-355(A);
- g. Prejudgment and post-judgment interest on unpaid back wages pursuant to the FLSA and/or ARIZ. REV. STAT. ANN. § 23-364(G);
- h. Tolling of the statute of limitations;
- i. Reasonable attorney's fees, costs and expenses of this action as provided by the FLSA and ARIZ. REV. STAT. ANN. §§ 12-341, 12-341.01, 23-364(G);
- j. In the event Defendants fail to satisfy any judgment for Plaintiff with respect to the Arizona wage claims, an award that Defendants shall pay Plaintiff an amount which is treble the amount of the outstanding judgment with interest thereon at the then legal rate in accordance with ARIZ. REV. STAT. ANN. § 23-360; and

1 k. Such other and further relief to which Plaintiff and Class Members
2 may be entitled, at law or in equity.

3
4 April 6, 2015

5 **KENNEDY HODGES, L.L.P.**

6 /s/ David W. Hodges

7 David W. Hodges (*pro hac vice admission*
8 *pending*)

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